IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Nestoryak	**Conf. No.:**	8177
Serial No.:	09/934,896	**Art Unit:**	2191
Filing Date:	08/22/2001	**Examiner:**	Vo, Ted T.
Title:	METHOD AND SYSTEM FOR INSTALLING A SOFTWARE PLATFORM ONTO A COMPUTER SYSTEM	**Docket No.:**	END920010006US1 (IBME-0013)

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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Sir:

Applicant respectfully requests a panel of experienced examiners perform a detailed review of appealable issues for the above-identified patent application pursuant to the Pre-Appeal Brief Conference Pilot Program. Applicant submits that the above-identified application is not in condition for appeal because the Office has failed to establish a prima facie case of anticipation based on an error in facts. Claims 1-35 are pending in this application.

Turning to the rejection, in the Final Office Action, claims 1-35are rejected under 35 U.S.C. §102(b) as allegedly being anticipated by Hohndel *et al.* "Automated Installation of Linux Systems Using YAST", 1999, hereafter "Hohndel."

Applicant submits that this rejection is clearly not proper and without basis because at least one claim limitation is not met by the Hohndel reference cited by the Office. As argued in the July 5, 2006 Amendment, Hohndel fails to teach or suggest each and every element of independent claim 1. In particular, Hohndel fails to teach providing a plurality of control files,

each control file having entries of computer system identifiers pertaining to a particular software platform. See July 5, 2006 Amendment, page 12, final paragraph through page 14, second paragraph. In particular, the equating by the Office of the "Automated Installation" of the title of Hohndel with the automatically providing of the claimed invention is flawed. Specifically, the presence of the word Automated in the Hohndel title does not necessarily mean that each and every aspect of Hohndel is automated. In the specific case of Hohndel, the control file is specifically taught as being able to be added to a Linux boot disk after the file "syslinx.cfg" is manually altered. To this extent, despite the presence of the word "Automated" in the title of Hohndel, its control file, if added, is added manually, and, as such, the providing of the Hohndel control file is not automated.

As further argued in the July 5, 2006 After Final Amendment, the Hohndel fails to teach providing a plurality of control files. The Office does not dispute that Hohndel fails to teach providing a plurality of control files, but instead attempts to read the limitation out of the claim by stating that because it is a single control file that is queried, the plurality of control files act like a single control file. See After Final Amendment, page 13, first paragraph. However, in doing so, the Office ignores the fact that the control file that is queried is selected from the plurality of control files because it corresponds to the software platform designated by the user. To this extent, the plurality of control files is not superfluous as suggested by the Office, but rather, provides a feature that is not contemplated by the Hohndel reference, *to wit*, installation of different software platforms corresponding to each control file.

As still further argued in the July 5, 2006 After Final Amendment, the Hohndel fails to teach designating, by a user, a computer system and a software platform of a plurality of software platforms to be installed onto the designated computer system using a graphical user

interface. Page 14, second paragraph through page 15, second paragraph. First, Hohndel does not teach that a user designates or selects a software platform to be installed on a computer system from a plurality of software platforms. Rather, Hohndel teaches a single Linux software platform. Further, the step by step guiding of a user through the installation of Linux does not, in and of itself, teach a graphical user interface as suggested by the Office. Rather, the step by step guiding of Hohndel may utilize test based commands, text based instructions, or other non-graphical guides that are well known in the art. In addition, nowhere do the explicit teachings of Hohndel indicate that a graphical user interface is utilized.
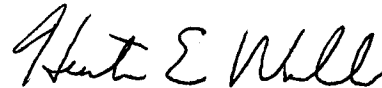
Accordingly, the Office has failed to state a prima facie case of anticipation, and this application is not in condition for appeal and should either be allowed as is, or re-opened for further prosecution.

With respect to the rejections of independent claims 9, 14, 16, 23, 29, 30 and 35, Applicant notes that each claim includes a feature similar in scope to the providing of the plurality of control files of claim 1. Further, the Office relies on the same arguments and interpretations of the cited references as discussed above with respect to claim 1. Additionally, with respect to the rejections of independent claims 9, 14, 16, 23, 29, 30 and 35, Applicant notes that each claim includes a feature similar in scope to that designating, by a user, a computer system and a software platform of a plurality of software platforms to be installed onto the designated computer system using a graphical user interface of claim 1. Further, the Office relies on the same arguments and interpretations of the cited references as discussed above with respect to claim 1. To this extent, Applicant herein incorporates the arguments presented above with respect to claim 1, and respectfully request withdrawal of the rejections of these claims for the above-stated reasons.

The dependent claims are believed to be allowable based on the above arguments regarding the claims from which they depend, as well as for their own additional features.

Applicant respectfully submits that the application is not in condition for appeal. Should the examining panel believe that anything further is necessary to place the application in better condition for allowance or for appeal, they are requested to contact Applicant's undersigned attorney at the telephone number listed below.

Respectfully submitted,

Date: October 11, 2006

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